

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6678

BILL NUMBER: HB 1386

NOTE PREPARED: Apr 11, 2007

BILL AMENDED: Apr 5, 2007

SUBJECT: Federal Sex Offender Bill.

FIRST AUTHOR: Rep. Lawson L

FIRST SPONSOR: Sen. Bray

BILL STATUS: As Passed Senate

FUNDS AFFECTED: X GENERAL
X DEDICATED
X FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

- A. It adds: (1) promoting prostitution as a Class B felony; (2) promotion of human trafficking if the victim is less than 18 years of age; (3) sexual trafficking of a minor; (4) human trafficking if the victim is less than 18 years of age; and (5) possession of child pornography as a first offense; to the list of offenses requiring a person to register as a sex offender. The bill specifies that registration as a sex offender is not required for: (1) a parent or guardian who is convicted of kidnapping or confining a child of the parent or a child over whom the guardian has guardianship; or (2) a person convicted of sexual misconduct with a minor as a Class C felony if the person is not more than four years older than the victim and the court finds that the person should not be required to register.
- B. *Child Pornography* – It specifies that, for purposes of the child pornography statute, a person may not possess certain material depicting or describing sexual conduct by a child: (1) the person knows is less than 16 years of age; or (2) who appears to be less than 16 years of age.
- C. *Child Seduction* – It provides that it is a Class B felony if a person commits child seduction by using a computer network and has a previous unrelated conviction for committing the offense by using a computer network.
- D. *Registration Requirement for Sexual Battery as a Class D Felony* – It removes the lifetime registration requirement for sexual battery as a Class D felony, and imposes the standard ten-year registration requirement.
- E. *New Offenses Added to Offender Against Children Statute* – It specifies that a person is an offender against children if the person engages in a conspiracy to commit or attempts to commit an offense that would make the person an offender against children.
- F. *Sex Offender Registration Fee* – It permits a county to adopt: (1) an annual sex offender registration fee that does not exceed \$50; and (2) a sex offender address change fee that does not exceed \$5. It

provides that 90% of each fee is deposited in the county sex offender administration fund, and 10% of each fee is transferred to the state for deposit in the state sex offender administration fund. It specifies that the funds are to be used for expenses related to the operation of the Indiana Sex Offender Registry.

- G. *Lifetime Parole for Sexually Violent Predators with Suspended Sentences* – It requires a sexually violent predator whose sentence does not include a commitment to the Department of Correction (DOC) to be placed on lifetime parole.
- H. *Credit Class IV for Felons Convicted of Certain Serious Child Molesting Offenses and Certain Murders Involving Sex Offenses* – The bill specifies that persons in credit Class IV earn one day of credit for each six days of incarceration. It provides that persons in credit Class IV may be placed in a credit class where they earn no credit, but may not be placed in a credit class where they earn more credit.
- I. *Fingerprint Information* – It permits the Department of Correction to report certain fingerprint information to the Indiana State Police, and makes certain other changes relating to fingerprinting.
- J. *Sex Offender Registration Procedures* – It requires the Department of Correction to maintain records on certain sex offenders who are no longer required to register in Indiana. It requires a local law enforcement authority to notify the DOC and update the National Sex Offender Registry data base when a sex offender registers or the registration information changes. It makes numerous other changes to sex offender registration procedures.
- K. *Evaluating Sex Offenders* – It requires a court to consider expert testimony before determining that a juvenile is likely to be a repeat sex offender, and establishes a procedure for psychological evaluation of sex offenders to determine if they are sexually violent predators.
- L. *Exceptions to Sexually Violent Predator Law* – It provides that a person who is not more than four years older than the victim, was involved in a dating relationship with the victim, and did not use violence in the commission of the offense is not a sexually violent predator if certain other conditions are met, and provides a similar defense to sexual misconduct with a minor. It establishes a procedure to permit an offender against children to petition a court to have the designation removed. It permits a court to suspend the sentence of a person convicted of nonviolent child molesting who is not more than four years older than the victim, who was involved in a dating relationship with the victim, and who meets certain other conditions. It specifies that "school property," for purposes of the offender against children statute, does not include the property of an institution providing post-secondary education. It makes other changes and conforming amendments.
- M. *Child Seduction* - It makes child seduction, a Class D felony, for a person: (1) who is at least 18 years of age; (2) who is a member the armed forces of the United States, or the Indiana National Guard; and (3) who is attempting to enlist a child at least 16 years of age but less than 18 years of age in the armed forces or Indiana National Guard; to engage with the child in sexual intercourse, deviate sexual conduct, or any fondling or touching with the intent to arouse or satisfy the sexual desires of either the child or the adult.

(The introduced version of this bill was prepared by the Sentencing Policy Study Committee.)

Effective Date: (Amended) Upon passage; July 1, 2007.

Explanation of State Expenditures: (Revised) The following table summarizes the effects that this bill would have on the Indiana State Police and the Department of Correction.

<i>Changes in Definitions of Sex Offenders and Sexually Violent Predators</i>	
<p>Added Categories for Sex Offenders – adds performing sexual conduct in the presence of a minor, first-time possession of child pornography, promoting prostitution as a Class B felony, promotion of human trafficking if victim younger than 18, sexual trafficking of a minor human trafficking if victim younger than 18 to sex offender definition.</p> <p>New Exceptions for Sex Offenders – allows court to not require certain persons guilty of sexual misconduct with a minor as Class C felony to register as sex offender; parents or guardians convicted of kidnaping or criminal confinement of children under 18 do not have to register as sex offenders.</p>	DOC would need to renegotiate its contract with software vendors, added one-time costs of between \$75,000 and \$180,000. (see background below for more information)
<p>Added Categories for Sexually Violent Predators - include offenders convicted of attempt or conspiracy to commit sex offense; with prior conviction as delinquent child. Sexually violent offenders not committed to DOC would be on lifetime parole (note: offenders sentenced for vicarious sexual gratification can have suspended sentence if first-time offense).</p> <p>Added Defense in certain situations where consensual sex occurred and person is not more 4 years older than victim.</p>	Sexually violent predators are placed on lifetime parole with GPS monitoring after release; minimum impact, 16 sex offenders committed to DOC in 2006 for attempt or conspiracy to commit sex crime.
<i>Changes in Penalties</i>	
New Offense -- sex offenders intentionally not residing at registered address commit a Class D felony as a first offense and Class C felony if prior unrelated offense.	See background on criminal penalties.
Enhanced Offense -- child solicitation using a computer network with a previous unrelated conviction for the same crime would commit a Class B felony (currently a Class C felony).	
New Offense -- child seduction when member of armed forces or national guard attempting to enlist child between 16 and 18 years of age who is victim (Class D felony).	
Making Exception to serving mandatory minimum if offender is convicted of Class B child molesting, the victim is not less than 12 years old, and offender not more than 4 years older than victim and has no prior convictions for a sex offense.	Currently, a person sentenced as an adult must serve a minimum 6 years for a Class B felony; under this exception offender could be placed on probation or in community corrections instead.
<i>Changes in Length of Stay for Certain Offenders</i>	
Credit-Restricted Class for Offenders sentenced for child molesting involving sexual intercourse or deviate sexual conduct if the person is at least 21 and the victim is less than 12; child molesting resulting in serious bodily injury or death; or murder if person killed the victim while committing or attempting to commit child molesting under certain circumstances	Significant long-term implications for DOC beginning in 2028 and peaking in 2043; DOC could need an additional 938 beds by 2044; see explanation and table under Credit Restricted Class

Registration and Info Processing	
Allows DOC to report fingerprints of sex offenders to State Police.	Some transitional costs to develop forms for forwarding information between DOC and State Police.
Maintain records of every sex offender who is incarcerated, relocated out of state, no longer required to register as sex offender.	Additional computer space needed for DOC in future years.
Registration of sex offenders must include vehicle description and vehicle plate number.	

(Revised) *Added Offenses to Sex Offender Registry*- This bill requires DOC to renegotiate its contract with vendors who administer the Indiana Sex Offender Registry. The Sex Offender Registry has two components for public use:

- a web page with the name, address, and picture of each offender.
- a geographical information system component that shows each offender on maps of varying scale.

The Department of Correction coordinates with the Indiana Sheriffs' Association to input offender information into a database. DOC then contracts with APPRISS Inc. to develop this information into a series of web pages with the offender's name, address, and recent picture. The current contract with APPRISS for initial costs was \$173,000, and DOC has a continuing contract to pay \$4,000 per month for maintenance. This maintenance contract expires on January 22, 2008.

The Office of the Attorney General contracts with Map Muse Inc. for developing the on-line maps of where sex offenders are located. The current contract for the services of Map Muse is \$42,100 and runs from January 31, 2005, to January 31, 2008.

To add a menu option for (1) promoting prostitution as a Class B felony; (2) promotion of human trafficking if the victim is less than 18 years of age; (3) sexual trafficking of a minor; (4) human trafficking if the victim is less than 18 years of age; and (5) possession of child pornography as a first offense to the list of offenses requiring a person to register as a sex offender, DOC estimates the costs to range between \$75,000 (to add the five specific offenses and rename the registry) and \$180,000 (to redesign the registry to allow for future changes at lower cost).

The following describes the features of these two options in greater detail.

<u>Option</u>	<u>Features</u>	<u>Cost</u>
Adds five specific offenses and renames the registry	Modifications would be made to the tool that local sheriffs use to collect data, the public uses to view data, APPRISS uses to transmit data to the National Sex Offender Public Registry, and APPRISS uses to provide data to MapMuse.	\$75,000
Redesigns registry to allow for future changes at lower cost	Sex and violent offenders would be in separate groups requiring registration and available for presentation to the public. Reduces future programming costs to add new registration requirements and new groups of offenders.	\$180,000

Background on Criminal Penalties: The following table shows the minimum, advisory, and maximum sentences for Class B, C, and D felonies.

Felony Class	Minimum	Advisory	Maximum
B	6 years	10 years	20 years
C	2 years	4 years	8 years
D	6 months	1.5 years	3 years

The average expenditure to house an adult offender was \$22,734 in FY 2006. (This does not include the cost of new construction.) If offenders can be housed in county jails under contract with a local sheriff, the costs to the Department of Correction would be \$35 daily, or \$12,775 annually.

(Revised) *Credit-Restricted Class* - Under current law, offenders are placed in one of three credit classes based on their conduct in the facilities where they are housed. Credit time refers to the number of days of incarceration that are removed from an offender's sentence for each day they are in the designated credit class.

<u>Credit Class</u>	<u>Credit Time</u>
Class I	One day credit time for each day in Class I
Class II	One day credit time for two days in Class II
Class III	No credit time

All offenders are initially placed in Credit Class I. They may be reassigned to Class II or III if they violate any rule of the penal facility, the Department of Correction (DOC), or the community transition program.

As proposed, a new credit category, Class IV, would be established for offenders who have been convicted and sentenced for child molesting as a Class A felony or murder while committing a sex crime. These offenders would serve six days in a DOC facility before they are permitted to receive any credit time.

The following chart represents the additional offenders that will be added and the additional prison cells that will be needed each year beginning in 2027 through 2043. Beginning in FY 2027, Class A felony offenders would remain in DOC for an additional 14 years, increasing the need for new beds by 928. In order to accommodate these offenders, facilities would need to be constructed to house 928 new beds. For purposes of this analysis, it is assumed that all construction costs would be paid in the year that the new beds are added so that no costs of debt would be incurred.

Offenders sentenced for murder while committing child molesting would begin their extended stay in 2042 and not be released until 2065. There are likely to be few offenders who are convicted of murder while committing a sex crime or child molesting who do not receive either the death penalty, life without parole, or a long determinant sentence that is effectively life without parole.

For CY 2006, LSA identified two offenders who were sentenced for murder while committing a sex crime. One received life without parole, and the other received a term of 110 years.

Projected Number of Beds Needed and Added Operating Costs (in \$ Millions)																
Fiscal Year	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043
New Offenders	58	116	174	232	290	348	406	464	522	580	638	696	754	812	870	928
New Operating Costs (1)	\$1.3	\$2.6	\$4.0	\$5.3	\$6.6	\$7.9	\$9.2	\$10.5	\$11.9	\$13.2	\$14.5	\$15.8	\$17.1	\$18.5	\$19.8	\$21.1
New Beds Needed	58	58	58	58	58	58	58	58	58	58	58	58	58	58	58	58
New Capital Costs (2)	\$4.4	\$4.4	\$4.4	\$4.4	\$4.4	\$4.4	\$4.4	\$4.4	\$4.4	\$4.4	\$4.4	\$4.4	\$4.4	\$4.4	\$4.4	\$4.4
Total Costs	<u>\$5.7</u>	<u>\$7.0</u>	<u>\$8.4</u>	<u>\$9.7</u>	<u>\$11.0</u>	<u>\$12.3</u>	<u>\$13.6</u>	<u>\$14.9</u>	<u>\$16.3</u>	<u>\$17.6</u>	<u>\$18.9</u>	<u>\$20.2</u>	<u>\$21.5</u>	<u>\$22.9</u>	<u>\$24.2</u>	<u>\$25.5</u>
(1) Based on FY 2006 Operating Costs of \$22,743 in Constant Dollars																
(2) Based on Average Cost of \$50,000 per Bed in Constant Dollars																

(Revised) *Projected Need for New Beds* – The added population that the DOC will need to accommodate will depend on at least two factors.

(1) The rate that offenders who are released from DOC are recommitted because of new crimes. This recidivism rate assumes that a percentage of offenders will return to DOC facilities because they committed a new crime or violated a technical condition of probation, parole, or some other type of community supervision. For this estimate, a 40% recidivism rate was used. This means that 40% of these offenders will likely return to DOC within their first year of release because they commit a new crime. Since these 40% are assumed to return to prison anyway, the new beds will be for the 60% of the offenders who would not otherwise be returning within one year.

(2) The additional length of time that offenders will be incarcerated in DOC facilities because offenders will spend 83% of their time incarcerated rather than 50%. The following table shows the year of earliest release for a five-year average of the Class A child molesters committed between CY 2002 and 2006 if they were to be released after spending 83% of their sentence incarcerated.

Offense	Offenders Committed Annually	Avg. Prison Term in Years	Year of Release If Offenders Are Sentenced in 2008			
			50% of Sentence Served		85% of Sentence Served	
			Years Spent in Prison Before Release	Earliest Year of Release	Years Spent in Prison Before Release	Earliest Year of Release
Murder	2	69	34.5	2043	57.5	2065
Child Molesting Fel. A	96	42.5	21.25	2028	35.4	2042

Explanation of State Revenues: (Revised) *Federal Byrne Grants*- Meeting the requirements of federal law within Indiana's sex offender registry statute is one of several conditions that must be met for the state to receive federal Byrne Grants. A recent change in federal law allows for the removal of certain types of sex offenders (as specified in the bill) required to register under state statute. The state received about \$6 M in Byrne Grants during FFY 2005 and about \$3.7 M in FFY 2006.

(Revised) *State Sex Offender Administration Fund* -- If all counties in Indiana adopt ordinances to collect the Sex Offender Registration Fee at the maximum rate of \$50, the estimated revenue that the state would receive would be \$40,955. Money in the fund would be used by the Department of Correction to carry out its duties in administering the Indiana Sex Offender Registry. (See also *Explanation of Local Revenues*.)

Explanation of Local Expenditures: (Revised) The following table describes the added responsibilities that would be assigned to local law enforcement agencies for monitoring and managing the movements of sex offenders and sexually violent predators.

<i>Monitoring and Management</i>	
Sex offenders employed or volunteering to work for more than 7 days in the state (currently 14 days).	The Department of Correction received responses from eight local law enforcement agencies concerning a survey of the costs of registering and monitoring sex offenders. On average, each agency spent about \$52 for each registration visit.
Probation departments forward information on sentencing to DOC for sex offenders not committed to DOC.	
Requires local law enforcement agencies to update National Crime Center Data Base and notify DOC if sex offender changes residential address or employment.	
Sex offenders with no home must register every 7 days with local law enforcement agency.	
Sexually violent offenders must report to local law enforcement agency and be photographed every 90 days.	

Note – When a sex offender registers with their county sheriff, the sheriff takes the offender's name (including all known aliases), date of birth, social security number, driver's license number, residential address, and work address. Additionally, the sheriff photographs the offender and sends the information, including photograph, to the Sex Offender Registry maintained by the Indiana Sheriffs' Association.

Background on Sexual Offenders and New Registry Offenses- There are currently 624 sex offenders that are on parole supervision. Over the next three years, it is anticipated that approximately 800 additional sex offenders will be released.

Explanation of Local Revenues: (Revised) *Sex Offender Administration Fee* – Any revenue generated will depend on the number of county councils that pass an ordinance allowing for this fee to be charged and what the fee level would be. The Department of Correction reports that in January 2007, 8,191 sex offenders were in the Sex Offender Registry statewide. If all 92 counties enact ordinances at the maximum \$50 per offender, the new revenue generated would be \$409,550. The county share of 90% would be \$368,595. This new revenue would be required to be deposited in the County Sex Offender Administration Fund.

This bill would also allow a county legislative body to adopt an ordinance to charge \$5 each time that a sex offender changes their address. The added revenue from this fee is not currently able to be determined.

State Agencies Affected: Department of Correction; Indiana Criminal Justice Institute; Indiana State Police; Indiana Judicial Center.

Local Agencies Affected: Trial courts; local law enforcement agencies.

Information Sources: Department of Correction; Indiana Sheriffs' Association; Steven King, Indiana Criminal Justice Institute, 317-234-1653; Indiana Sentencing Policy Study Committee Draft Minutes, September 18, 2006, meeting.

Fiscal Analyst: Mark Goodpaster 317-232-9852.